

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

OMAHA CONSTRUCTION INDUSTRY)
PENSION FUND, BOARD OF)
TRUSTEES OF THE OMAHA)
CONSTRUCTION PENSION FUND,)
OMAHA CONSTRUCTION HEALTH)
AND WELFARE FUND, and BOARD)
OF TRUSTEES OF THE OMAHA)
CONSTRUCTION INDUSTRY HEALTH)
AND WELFARE FUND,)

8:05CV186

Plaintiffs,

MEMORANDUM AND ORDER

v.

DOUBLE D EXCAVATING,)
)
Defendant.)

This matter is before the court on plaintiffs' motion for judgment on undisputed amount, Filing No. 20; plaintiffs' motion for summary judgment, Filing No. 13; and defendant's resistance thereto, Filing Nos. 18 & 19. In their motion for summary judgment and supplementary affidavit in support of the motion, plaintiffs assert that defendant is liable to plaintiffs for unpaid contributions for all work covered by their collective bargaining agreement in the amount of \$50,349.51. See Filing Nos. 13 & 16. Defendant concedes that it owes unpaid contributions in the amount of \$40,625.78. Filing Nos. 18 & 19.

Plaintiffs have also shown by affidavit that defendant's employees who receive health coverage from plaintiff Omaha Construction Industry Health and Welfare Fund will have their eligibility for health coverage terminated as of February 16, 2006, unless payment is received for delinquent contributions from defendant. See Filing No. 19. It thus appears that defendant's liability for the amount of \$40,625.78 is no longer at issue

and it is appropriate to enter judgment in that amount. The submissions of the parties show that there are genuine issues of material fact with respect to liability for the remaining amount and plaintiffs' motion for summary judgment will be denied in all other respects.

Accordingly,

IT IS HEREBY ORDERED that:

1. Plaintiffs' motion for summary judgment (Filing No. 13) is granted in part and denied in part.

2. Partial judgment is entered in favor of the plaintiffs and against the defendant in the amount of \$40,625.78.

DATED this 14th day of February, 2006.

BY THE COURT:

s/ Joseph F. Bataillon

JOSEPH F. BATAILLON

United States District Judge